

# Lazo-Majano: Alive, Well, and Thriving at Twenty-Seven

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Judge John T. Noonan, Jr.\*

INTRODUCTION  
by Deborah Anker

*Judge John T. Noonan, a brilliant judge and scholar, is also a maverick. His 1987 decision in Lazo-Majano v. INS<sup>1</sup> was well ahead of its time and changed the course of U.S. asylum law. Prior to Lazo-Majano, it was virtually unheard of that gender-based persecution like rape or domestic violence could be a basis for asylum under the refugee definition in U.S. law, which requires that the asylum seeker have suffered persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion.<sup>2</sup> Lazo-Majano was the first case to articulate the imputed political opinion doctrine: that an asylum seeker could suffer persecution on the basis of a political opinion her persecutor imputed to her, whether or not she expressed such an opinion.<sup>3</sup> Further, the case was the first to acknowledge domestic violence as a form of gender persecution that could form a basis for asylum: it recognized a man's abuse of a woman as an expression of his political opinion regarding male dominance and female subordination and his desire to punish a woman for holding a contrary view.<sup>4</sup> Finally, and perhaps most importantly, the decision recognized that women naturally have a political opinion opposing abuse, and their flight from abuse may be an expression of that opinion.<sup>5</sup>*

*Judge Noonan was the keynote speaker at the Thirtieth Anniversary Celebration of the Harvard Immigration and Refugee Clinical Program, held in June 2014. The Clinic has taken the lead in many areas, defending immigrants in workplace raids and winning key cases that define persecution fulsomely, especially in the area of gender asylum. For years, the Clinic, in many ways inspired by Lazo-Majano, argued for*

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\* Judge John T. Noonan, Jr. is a federal judge for the Ninth Circuit Court of Appeals in San Francisco, California.

1. 813 F.2d 1432 (9th Cir. 1987).

2. Immigration and Nationality Act, 8 U.S.C. § 1101(42)(A) (2014).

3. See *Lazo-Majano*, 813 F.2d at 1435–26.

4. See *id.* at 1435.

5. See *id.*

*the right to asylum where the applicant was the victim of domestic violence. The battle over this issue extended over almost a decade.<sup>6</sup> In August of last year, the Board of Immigration Appeals finally issued a historic decision, Matter of A-R-C-G,<sup>7</sup> which held that domestic violence could be the basis of asylum and that gender could be a critical element in establishing asylum eligibility under the particular social group ground in the legal definition of refugee.<sup>8</sup> Now, twenty-eight years later, Lazo-Majano's holding that domestic violence could be the basis of an asylum claim has been adopted by the national administrative authorities and is the law of the land.*

I salute the Harvard Immigration and Refugee Program and join in the celebration of its thirtieth anniversary. Its indomitable staff has made the legal system an instrument of compassion. They have put the power of law at the service of the poor and the persecuted.

As a contribution to this happy occasion, I commemorate a case that has played a part in the development of immigration law.

I had heard argument in only one other session of the appeals court when I heard the case of Olimpia Lazo-Majano. Immigration law was a field foreign to my experience: I had never had an immigration case in private practice. I had never taught an immigration case in teaching Professional Responsibility. I was aware, however, that aliens as a class were treated differently from, and worse than, citizens. In that respect, a lawyer's responsibility to them was higher, for they were partially disabled to act for themselves, a point I had made in teaching Professional Responsibility using a case involving a lawyer for a slave in Alabama before the Civil War. I was familiar with the biblical injunction, "[y]ou too must love the alien, for you once lived as aliens in Egypt,"<sup>9</sup> a passage read aloud at my installation as a judge. And I had the help of a law clerk, John Maguire, who held a doctorate in sociology from Berkeley, where Robert Bellah had rated him as among the most brilliant students ever in the department. Maguire led me within the contours and around the crevices of the system governing the admission of aliens as refugees into the United States.

A judge deals with precedents and principles. A judge also interacts with persons. A judge can sometimes overlook the persons as his attention is

6. See DEBORAH E. ANKER, LAW OF ASYLUM IN THE UNITED STATES § 5.50 (forthcoming 2015). See generally Deborah E. Anker, *Legal Change from the Bottom Up: The Development of Gender Asylum Jurisprudence in the United States*, in GENDER AND REFUGEE LAW: FROM THE MARGINS TO THE CENTRE 46 (Efrat Arbel, Catherine Dauvergne & Jenni Milbank eds., 2014).

7. 26 I. & N. Dec. 388 (BIA 2014).

8. See *id.* at 391–95. The Clinic submitted the key amicus for the leading immigration bar association, the American Immigration Law Association. *HIRC Plays Key Roles in Landmark Decision Recognizing Domestic Violence as Grounds for Asylum*, HARVARD LAW SCHOOL CLINICAL AND PRO BONO PROGRAMS (Aug. 27, 2014), <http://blogs.law.harvard.edu/clinicalprobono/2014/08/27/hirc-plays-key-role-in-landmark-decision-recognizing-domestic-violence-as-grounds-for-asylum/>, archived at <http://perma.cc/Z3S9-CTDR>.

9. Deuteronomy 10:19.

focused on the law. But the judge's acts always affect persons—real, living, breathing humans. These creatures should not be reduced to a statistical norm, to a weighted average, to a generalization, to a mask. Attention to the person will lead to discovery of a principle and even the creation of a precedent. But more fundamentally, attention to the person is attention to the being at the center of the case. Such was my experience with the case of Olimpia Lazo-Majano. The suggestion to speak today about her case came from my wife, Mary Lee, so often an unseen inspiration of my thinking. Olimpia, as I referred to her for humanity's sake in the opinion—what mock formality to call her “petitioner” or Mrs. Lazo-Majano—was, in the formula used in such cases, seeking review of a decision of the Board of Immigration Appeals (“BIA”) that had affirmed a decision of an immigration judge. A refugee from El Salvador, she had asked for the remedies offered by our law to a victim of persecution—the withholding of deportation or the grant of asylum. She had been denied both. If we granted her petition and sent the case back to the BIA, it was highly likely that she would be granted relief.

Her story was unchallenged by the immigration service and assumed to be true by the immigration judge and the BIA. It ran as follows:

[She was] thirty-four, [married,] . . . and the mother of three children. In 1981, when she was twenty-nine, her husband left El Salvador for political reasons: he had been in the rightist paramilitary group known as ORDEN; when he quit he was wanted by the guerrillas and distrusted by the government. Olimpia had always lived in the same small town. For five years she had been working as a domestic for another woman, getting a day off every fifteen days. In the middle of April 1982, she received a telephone call from Sergeant Rene Zuniga, who had known her since childhood. He asked her to wash his clothes. Olimpia agreed.

On her day off during the next six weeks Olimpia worked for Zuniga at Zuniga's place. Zuniga then pointed out that Olimpia's husband was no longer in El Salvador and from this fact drew his conclusions. In Olimpia's words: “With a gun in his hand he made me be his.”

In the following months Olimpia accepted Zuniga's domination. She continued to wash for him on her days off. She accepted taunts, threats, and beatings from him. He broke her identity card in pieces and forced her to eat the pieces. He dragged her by the hair about a public restaurant. He pummeled her face, causing a blood clot to form in one eye; she thought that she had lost the eye. She was nervous, preoccupied, and depressed, ate little, and became thin and frail. She wanted to escape her tormentor but saw no way of doing so.

Central to the situation was the fact that Zuniga was a sergeant in the *Fuerza Armada*, the Armed Force [that] is the Salvadoran military. Zuniga used his gun in forcing Olimpia to submit the first time. On another occasion Zuniga held two hand grenades against her forehead. On another occasion he threatened to bomb her. When he referred to her husband, Zuniga said that if he returned Zuniga himself would cut him apart, kill Olimpia as well and say that they were both subversives. Zuniga informed Olimpia that it was his job to kill subversives.

Zuniga said to Olimpia that if she ever told on him he would have her tongue cut off, her nails removed one by one, her eyes pulled out, and she would then be killed. As Olimpia recalled his statement, he said: “[a]nd I can just say that you are contrary to us; subversive.” When he was angry with her in the restaurant, he told a friend from the police “in front of all the other people in the restaurant” that she was a subversive and that was why her husband had left: “because she was a subversive.”

Olimpia believed the Armed Force would let Zuniga carry out his threat. She believed that in 1979 a nineteen-year old boy she knew by sight had been tied, tortured and killed by the Armed Force; that in 1981 the husband of a neighbor had been taken away in a truck at night with fifteen others and killed by the Armed Force; that the Armed Force had raped “young college girls,” as had Zuniga himself. In her view there was nobody in El Salvador that could stop the Armed Force from doing such things. In her experience when Zuniga was dragging her by the hair in the restaurant no one helped because where the Armed Force was concerned, “no one will get involved.”<sup>10</sup>

That Zuniga’s treatment of Olimpia constituted persecution was beyond dispute. Three questions remained, the first of which was: had she not consented to his conduct? To that question an opinion in another case by Judge Harry Pregerson, a fellow panel member, provided a compelling answer. Judge Pregerson had commented on the acquiescence of the victim of a kidnapping where the defendant had urged that her acquiescence absolved him of any crime. To the contrary, Judge Pregerson denied the defense and noted that the victim’s passivity presented a “pattern, all too familiar, of a victim identifying with the aggressor under conditions of terror.”<sup>11</sup> She lacked “sufficient ego-strength, self-confidence and willpower” to escape or cry out for help.<sup>12</sup> So, too, Olimpia’s identification with her persecutor did not transform the persecution into collaboration.

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10. Lazo-Majano v. I.N.S., 813 F.2d 1432, 1433–34 (9th Cir. 1987).

11. *Id.* at 1434.

12. United States v. Winters, 729 F.2d 602, 605 (9th Cir. 1984).

My analysis of Olimpia's conduct came perilously close to factfinding, an activity forbidden in appellate court. In my judgment, her psychology was implicit in her story. In accepting her account as fact, as had the BIA, we accepted the psychology written on its face.

The second question was: were Zuniga's acts those of the government? The law attributes to a government those acts that the government is unable or unwilling to restrain. I thought it evident that Zuniga had impunity to do what he wanted with Olimpia. He acted as a "member of the Armed Force, a military power that exercised domination over much of El Salvador despite some efforts of the Duarte government to restrain it. Zuniga had his gun, his grenades, his bombs, his authority, and his hold over Olimpia because he was a member of this powerful military group that the government lacked power to control."<sup>13</sup>

The third question was the most difficult. Olimpia, the government confidently asserted, had to demonstrate that she had a political opinion for which she was persecuted by Zuniga. Here her case collapsed. The government argued that there was no evidence in the record to support petitioner's contention that Zuniga was persecuting her for her political opinion, and moreover that nothing in the record indicated what, if any, political opinion she held. The government stated the facts accurately. At no point had Olimpia expressed a political opinion for which she had been persecuted. Zuniga's conduct was deplorable but personal, a sadomasochistic relation between two "sweethearts." It was not an implausible contention. Yet were these all the facts in Olimpia's case? It seemed to me that there was more to be considered.

Zuniga had maintained his hold over Olympia by attributing to her a political opinion. She would be killed as a subversive, Zuniga had told her, if she complained about him.<sup>14</sup> He told a restaurant full of people that she was a subversive.<sup>15</sup>

Olympia herself was innocent of any political beliefs. Treated as the enemy of the country, she became subject to persecution on account of the political opinion assigned by her persecutor. Because of that attribution, Olimpia had to suffer a series of sexual acts that everyone saw as persecution.<sup>16</sup> I concluded that Olimpia met the criteria for relief.

In my opinion, I went further than was necessary in order to specify a second political opinion for which Olimpia feared future persecution. If the situation was seen in its social context, Zuniga was asserting the political opinion that a man has a right to dominate women.<sup>17</sup> He had persecuted Olimpia to force her to accept this opinion without rebellion. Zuniga told

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13. *Lazo-Majano*, 813 F.2d at 1434.

14. *Id.* at 1433.

15. *Id.*

16. *Id.* at 1435.

17. *Id.*

Olimpia that in his treatment of her, he sought revenge, but Olimpia knew of no injury she had ever done Zuniga. His statement reflected a much more generalized animosity to the opposite sex, an assertion of a political conviction about the place of men in the society and a determination to enforce it. By itself such an assumption would not constitute persecution. It has been the common assumption of many societies. It was only when such an assumption was accompanied by a man's threatened use of political force in order to subject a woman to his sexual urges that the women suffered persecution on account of the political opinion she was assigned to accept. Zuniga did not permit Olimpia to hold an opinion to the contrary. When by flight, she asserted one, she became exposed to persecution for her assertion.<sup>18</sup> Future persecution threatened her because of this political opinion.<sup>19</sup> This probability of future political persecution was a second, independent reason for granting relief.

An alien is entitled to withholding of deportation if it is more likely than not that she would be persecuted on account of her political opinion if deported to her native land.<sup>20</sup> That means there has to be a fifty-one percent chance of persecution. An alien is also entitled to asylum, in the discretion of the Attorney General, if she has "a well-founded fear of persecution" on account of her political opinion.<sup>21</sup> To meet this discretionary standard, the chances have to be at least one in ten.<sup>22</sup>

We held that the BIA, to whom the Attorney General's discretion had been delegated, had abused that discretion in denying her asylum and that the BIA's decision denying withholding of deportation was not supported by substantial evidence.<sup>23</sup> The chances were not just one in ten but even more than five in ten that she would suffer at Zuniga's hands, if sent back to El Salvador.

Judge Pregerson was the other judge constituting the "we" issuing this opinion. My third colleague dissented.<sup>24</sup> He wrote:

The record here shows a Salvadoran woman, Lazo-Majano, who was abused and dominated by an individual purely for sexual, and clearly ego reasons. Neither petitioner nor her tormentor was "politically" motivated in any sense contemplated by the laws granting asylum to aliens. The holding that, as a matter of law, Lazo-Majano was persecuted on account of political opinion, is a construct of pure fiction.<sup>25</sup>

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18. *Id.*

19. *See id.*

20. *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 421 (1987).

21. Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42)(A) (2014).

22. *See Cardoza-Fonseca*, 480 U.S. at 421.

23. *Lazo-Majano*, 813 F.2d at 1436.

24. *Id.* at 1436-41 (Poole, J., dissenting).

25. *Id.* at 1437.

Our dissenting colleague took special umbrage at our view of the political nature of the future persecution that Olimpia feared. He wrote: “[q]uite simply, the majority has outdone Lewis Carroll in its application of the term ‘political opinion’ and in finding that male domination in such a personal relationship constitutes political persecution.”<sup>26</sup>

This judge did not think Zuniga’s threats to treat Olimpia as a subversive were credible. The threats “were effective because she was unsophisticated enough to believe that this low-grade bully-tyrant might make trouble.”<sup>27</sup> The dissenter did not acknowledge that Zuniga appeared to be unrestrained by the government of El Salvador. For him, the relationship between Zuniga and Olimpia was not political, but personal.

Jim Browning, our chief judge, a man characterized by modesty, good sense, and kindness, was sufficiently taken aback by the tone of the dissent that he took the unusual step of speaking to the dissenter about it before the decision was published. “Go home and read your dissent to your wife,” he advised. I do not believe that his advice was heeded.

Given this spirited dissent, it was not surprising that the government sought rehearing by the panel and rehearing en banc by the court. We had, we were informed by the government’s petition, “transmogrified” immigration law by our view that machismo could constitute a political opinion whose assertion would be political.<sup>28</sup> “Transmogrify” is a word that sounds formidable but the meaning of which is unknown to most who hear it. Webster’s says the word means “to change in form, appearance or structure, often with grotesque or humorous effect.”<sup>29</sup> I assume that the government was contending that our effect was grotesque. We denied the petition. No judge asked for rehearing en banc. Certiorari was not sought. The central holding remains the law that the political opinion the persecutor attributes to his victim is decisive in determining on what account the asylum-seeker has been persecuted.<sup>30</sup>

Uncited to us by the parties and undiscovered by us or our law clerks at the time was *Hernandez-Ortiz v. I.N.S.*, an opinion by Judge Stephen Reinhardt, joined by Judge Robert Boochever and Judge Dorothy Nelson.<sup>31</sup> The opinion turned on the ability of a refugee from El Salvador to reopen deportation proceedings.<sup>32</sup> In the course of the opinion, Judge Reinhardt wrote: “[m]oreover, it is irrelevant whether a victim actually possesses any of these opinions as long as the government believes that he does.”<sup>33</sup> Our case took

26. *Id.*

27. *Id.* at 1439.

28. Respondent’s Petition for Reh’g and Reh’g En Banc at 11, *Lazo-Majano v. INS*, 813 F.2d 1432 (9th Cir. 1987) (No. 85-7384).

29. *Transmogrify*, MERRIAM-WEBSTER, available at <http://www.merriam-webster.com/dictionary/transmogrify>, archived at <http://perma.cc/G45X-F8EZ>.

30. *Lazo-Majano*, 813 F.2d at 1435.

31. 777 F.2d 509 (9th Cir. 1985).

32. *Id.* at 512.

33. *Id.* at 517.

the principle enunciated one step further in recognizing that a persecutor could make up the belief that he chose to persecute.<sup>34</sup> The significance of the decision was at once noted by the Los Angeles Times in a column on April 3, 1987 by staff writer Kim Murphy. As its headline accurately stated: “Court broadens rules for political refugees.”

If you follow the history of our case in West, you will find the notation “overruled on other grounds.”<sup>35</sup> The reference is to *Fisher v. INS*,<sup>36</sup> where an en banc court simply disapproved of “taking notice of reports supporting petitioner’s asylum claim.”<sup>37</sup> Notice of such reports was peripheral to our decision in *Lazo Majano*. Fisher’s reference was a gratuitous gesture unsuccessful in lessening the luster of our case.

A judge does not usually follow the life of the litigant after the litigation is over. This occasion today has led me to see what became of Olimpia. Thanks to the efforts of our court librarian in Phoenix, she has been discovered. This year, the librarian located her and arranged for me to telephone her. On May 9, 2014, I had the distinct pleasure of speaking to her. She responded graciously, even complimenting my elementary Spanish. The climax of discovering her was to learn that on August 21, 2008, she had become a citizen of the United States.

I turn from the life of the litigant to the more familiar area of the life of the law. The law of this case goes on, alive and well. *Lazo-Majano* has been cited at least nine times in district court habeas actions, over sixty times in decisions by federal courts of appeal, as many as 153 times in secondary authorities, and more than one thousand times in briefs and auxiliary documents.<sup>38</sup> Within a year of its decision, it was followed by Judge Thomas Tang, writing for a unanimous panel in *Desir v. Illchert*.<sup>39</sup> It has been cited as recently as 2013 in *Regalado-Escobar v. Holder*.<sup>40</sup>

The case has never been noticed by the Supreme Court. However, a decision of the Supreme Court, *INS v. Elias-Zacarias*,<sup>41</sup> appeared to some to endanger its life. The petitioner, a citizen of Guatemala seeking asylum, had been visited by guerillas who attempted to conscript him.<sup>42</sup> Fearing government retaliation, he refused.<sup>43</sup> The guerillas then threatened him.<sup>44</sup> The immigration judge held that he had not shown persecution on account

34. *Lazo-Majano*, 813 F.2d at 1435 (“The opinion, it may be said, is not Olimpia’s. It is only imputed to her by Zuniga. And it is imputed by Zuniga cynically. Zuniga knows that Olimpia is only a poor domestic and washerwoman. She does not participate in politics.”).

35. *Id.*

36. 79 F.3d 955 (9th Cir. 1996).

37. *Id.* at 963.

38. See Westlaw Search Results for citing references for *Lazo-Majano v. I.N.S.*, Jan. 4, 2015 (on file with Harvard Human Rights Journal).

39. 840 F.2d 723 (9th Cir. 1988).

40. 717 F.3d 724 (9th Cir. 2013).

41. 502 U.S. 478 (1992).

42. *Id.* at 479.

43. *Id.* at 480.

44. See *Elias-Zacarias v. U.S. I.N.S.*, 921 F.2d 844, 851 (9th Cir. 1990).



of political opinion; he had simply suffered a random threat of violence.<sup>45</sup> We reversed, holding that the guerillas had imputed a political opinion to him; the guerillas then had threatened him with persecution for holding it.<sup>46</sup> In an opinion by Justice Scalia, the Supreme Court, six to three, reversed the Ninth Circuit,<sup>47</sup> finding that Elias-Zacarias's unwillingness to take sides was not necessarily a political opinion.<sup>48</sup> The Court held that the ordinary meaning of "persecution on account of political opinion" is persecution on account of the *victim's* political opinion.<sup>49</sup>

On its face nothing in this case cast a shadow on *Lazo-Majano*. It was, however, clear that the Supreme Court focused exclusively on the petitioner's belief or lack thereof. No attention was given to the view of him by his persecutors, the guerillas. Did this approach signal a repudiation of *Lazo-Majano*?

In a thoughtful article in the Georgetown Immigration Law Journal, Donald W. Yoo, Assistant Chief Counsel of United States Immigration and Customs Enforcement, explored the question.<sup>50</sup> Yoo was not enthusiastic about what he seemed to perceive as an anomalous Ninth Circuit approach. Yet picking his way cautiously, Yoo did not charge the circuit with flouting the Supreme Court. He noted that in 1993, the General Counsel of the INS had issued an opinion letter stating that a petitioner qualified on the basis of a protected characteristic erroneously imputed to him.<sup>51</sup> In 2000, the Attorney General issued new regulations that incorporated this rule.<sup>52</sup>

In 2003, the rule was applied in the case of a Ghanaian man persecuted on account of homosexuality attributed to him by his persecutors.<sup>53</sup> The Third Circuit observed that persecution on any of the five protected grounds could be the basis for asylum when the persecutors erroneously attributed the characteristic to the petitioner.<sup>54</sup> The court referred to the INS General Counsel's opinion letter,<sup>55</sup> which observed that a non-Jew persecuted by the Nazis as a Jew could obtain asylum.<sup>56</sup> Yoo appeared to regret this development. His article concluded: "the danger lies in the fact that

45. See *id.*; I.N.S. v. Elias-Zacarias, 502 U.S. 478, 480–81 (1992).

46. See *Elias-Zacarias v. U.S. I.N.S.*, 921 F.2d at 850.

47. I.N.S. v. Elias-Zacarias, 502 U.S. at 478.

48. See *id.* at 482.

49. *Id.*

50. See generally Donald W. Yoo, *Exploring the Doctrine of Imputed Political Opinion and its Application in the Ninth Circuit*, 19 GEO. IMMIGR. L.J. 391 (2004–2005).

51. *Id.* at 405 (citing INS General Counsel Opinion Letter, Genco Op. No. 93-1, 1993 WL 1503948 (Jan. 19, 1993)).

52. Asylum and Withholding Definitions, 65 Fed. Reg. 76588-01, 76592 (proposed Dec. 7, 2000).

53. *Amanfi v. Ashcroft*, 328 F.3d 719, 721 (3rd Cir. 2003).

54. *Id.* at 730.

55. *Id.* at 728.

56. INS General Counsel Opinion Letter, *supra* note 51, at \*3.

the mere words or actions of the persecutor can be pivotal and perhaps ultimately determinative.”<sup>57</sup>

Why is it a “danger” that the words or actions of the persecutor should be “pivotal”? Are we not determining whether the alien has been persecuted on the basis of a protected characteristic? Why does the title of Yoo’s article imply that “the doctrine of imputed political opinion” is peculiarly a Ninth Circuit approach? In Yoo’s article, a resistance to wholehearted acceptance of *Lazo-Majano* smoulders.

I return at the end to the macro level, to all the persons seeking to live here. On the level of the system, the figures speak. There are only 260 immigration judges.<sup>58</sup> They completed more than 253,000 proceedings in 2013,<sup>59</sup> an average of 973 per year for each judge. In 2013, the Department of Homeland Security removed over 438,000 noncitizens.<sup>60</sup> I cannot report these numbers without a sense of the immensity of the caseload and its overwhelming impact upon the system as it stands.

The American Bar Association commissioned Arnold and Porter in 2010 to undertake a comprehensive review of the immigration system.<sup>61</sup> I cannot improve on Arnold and Porter’s excellent study and equally excellent recommendations. The problems identified by the study cry out. Why are they not addressed? The amount of money needed to provide the necessary remedies would be significant but far from being beyond federal resources. I do not believe that money is lacking.

At the root of the issue is the immunity of elected lawmakers from those who cannot vote. Those who speak for the immigrant are not enough to sway them. The consciences and the consciousness of our legislators need to be invigorated. Individual cases serve this purpose. Olympia Lazo-Majano’s successful journey to citizenship lights the way. Judge Learned Hand famously said in the *Alcoa* case, “the power and its exercise must needs coalesce.”<sup>62</sup> Our legislators have the power. Let the coalescence commence.

57. Yoo, *supra* note 50, at 407.

58. *Office of the Chief Immigration Judge*, U.S. DEP’T OF JUSTICE (Jan. 2015), available at <http://www.justice.gov/eoir/ocijinfo.htm>, archived at <http://perma.cc/D4CY-6F7C>.

59. U.S. DEP’T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, 2013 FY STAT. Y.B. A2, available at <http://www.justice.gov/eoir/statpub/fy13syb.pdf>, archived at <http://perma.cc/3PUD-N3W9>.

60. John F. Simanski, *Immigration Enforcement Actions: 2013*, IMMIGR. ENFORCEMENT ACTIONS 5 (U.S. Dep’t of Homeland Sec., Office of Immigration Statistics, 2014), available at [http://www.dhs.gov/sites/default/files/publications/ois\\_enforcement\\_ar\\_2013.pdf](http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf), archived at <http://perma.cc/JQ59-BYK9>.

61. See generally AM. BAR ASS’N COMM’N ON IMMIGRATION, REFORMING THE IMMIGRATION SYSTEM: PROPOSALS TO PROMOTE INDEPENDENCE, FAIRNESS, EFFICIENCY, AND PROFESSIONALISM IN THE ADJUDICATION OF REMOVAL CASES (2010).

62. *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 428 (2d Cir. 1945).